

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

Jessica M. Brown,

Plaintiff(s),

vs.

Goodwill Stores,

Defendant(s).

**2:24-cv-00138-GMN-MDC**

**Order**

Pending before the Court are plaintiff Jessica Brown’s Application to Proceed *In Forma Pauperis* (“IFP”) (ECF No. 9), *Motion for Appointment of Counsel* (ECF No. 10), and Amended Complaint (ECF No. 7). The Court denies Ms. Brown’s IFP application (ECF No. 9). The Court dismisses her Amended Complaint (ECF No. 7) without prejudice. The Court denies her *Motion for Appointment of Counsel* (ECF No. 10) without prejudice.

**DISCUSSION**

**I. *In Forma Pauperis***

Ms. Brown filed an IFP application (ECF No. 9). The Court notes that it previously granted her IFP application (ECF No. 1). ECF No. 5. Therefore, the Court denies her IFP application (ECF No. 9) as moot.

The Court warns Ms. Brown that such duplicative filings unnecessarily consume the Court’s resources. *See In re McDonald*, 489 U.S. 180, 184, 109 S. Ct. 99.3, 103 L. Ed. 2d 158 (1998). Ms. Brown is further warned that future duplicative or improper filings may be struck from the docket without notification. *See Ready Transp., Inc. v. AAR Mfg., Inc.*, 627 F.3d 402, 404 (9th Cir. 2010) (holding that district courts have authority to strike an improper filing under their inherent power to control the docket).

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## II. Amended Complaint

On March 4, 2024, the Court issued a Screening Order (ECF No. 5) on Ms. Brown's original Complaint (ECF No. 1-1). The Court dismissed her original Complaint (ECF No. 1-1) without prejudice primarily for (1) failing to allege how defendant(s) acted under color of state law and (2) potentially being barred by the *Heck* Doctrine. ECF No. 5 at 4-8. The Court gave Ms. Brown leave to amend her Complaint and ordered her to file an Amended Complaint by April 26, 2024. ECF No. 5 at 9:7-9. Ms. Brown filed an Amended Complaint on March 19, 2024. ECF No. 7. However, the Court finds that Ms. Brown has failed to (1) cure the deficiencies noted in the Court's Screening Order (ECF No. 5) and (2) file an amended complaint that is "complete in itself." LR 15-1. The Court will give Ms. Brown one more opportunity to cure. Thus, the Court dismisses Ms. Brown's Amended Complaint (ECF No. 7) without prejudice and with leave to file a stand-alone, amended complaint that cures the deficiencies noted in the Court's Screening Order (ECF No. 5).

### a. Legal Standard

Upon granting a request to proceed in forma pauperis, the Court must screen the complaint pursuant to 28 U.S.C. § 1915(e). The Court will review the complaint to determine whether the complaint is frivolous, malicious, fails to state a claim in which relief may be granted, or seeks monetary relief against a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2)(B). The Federal Rules of Civil Procedure Rule 8(a)(2) provides that a complaint must contain "a short and plain statement of the claim showing that the [plaintiff] is entitled to relief." The Supreme Court's decision in *Ashcroft v. Iqbal* states that to satisfy Rule 8's requirement, a complaint's allegations must cross "the line from conceivable to plausible." 556 U.S. 662, 680 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 547 (2007)). Dismissal for failure to state a claim under § 1915 incorporates the same standard for failure to state a claim under Federal Rule of Civil Procedure Rule 12(b)(6). *Watison v. Carter*, 668 F.3d 1108, 1112 (9th Cir. 2012) A complaint should be dismissed under Rule 12(b)(6) "if it

1 appears beyond a doubt that the plaintiff can prove no set of facts in support of her claims that would  
2 entitle him to relief.” *Buckley v. Los Angeles*, 968 F.2d 791, 794 (9th Cir. 1992).

3 “A document filed *pro se* is “to be liberally construed” and a *pro se* complaint, however  
4 inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers.”  
5 *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (quoting *Estelle v. Gamble*, 429 U.S. 97, 106 (1976)  
6 (internal citations omitted). If the Court dismisses a complaint under § 1915(e), the plaintiff should be  
7 given leave to amend the complaint with directions as to curing its deficiencies, unless it is clear from  
8 the face of the complaint that deficiencies could not be cured through amendment.” *Cato v. United*  
9 *States*, 70 F.3d 1103, 1106 (9th Cir. 1995) (emphasis added).

10 “[W]hen a plaintiff files an amended complaint, ‘[t]he amended complaint supersedes the  
11 original, the latter being treated thereafter as non-existent.’” *Rhodes v. Robinson*, 621 F.3d 1002, 1005  
12 (9th Cir. 2010) (quoting *Loux v. Rhay*, 375 F.2d 55, 57 (9th Cir.1967)). An amended complaint must be  
13 “complete in itself, including exhibits, without reference to the superseded pleading.” LR 15-1(a). In  
14 other words, the amended complaint is an entirely new document that completely sets forth the facts and  
15 claims for relief.

#### 16 **b. Analysis**

17 On March 4, 2024, the Court issued a Screening Order (ECF No. 5) dismissing Ms. Brown’s  
18 Complaint (ECF No. 1-1) for failing to state a claim upon which relief can be granted. The Court’s  
19 order outlined the deficiencies in Ms. Brown’s Complaint and statement of her claims. Ms. Brown  
20 submitted an amended complaint (ECF No. 7) in response to the Court’s Screening Order (ECF No. 5).  
21 Ms. Brown’s amended complaint (ECF No. 7), however, does not cure the previously outlined  
22 deficiencies and fails to state a claim upon which relief can be granted. In sum, Ms. Brown still fails to  
23 show how Goodwill and its employee(s) acted under color of state law. ECF No. 7. Ms. Brown also fails  
24 to show that her claim is not barred by the *Heck* Doctrine. *Id.*

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1                   **i. Color of State Law**

2           Ms. Brown does not allege any new facts that show that the Goodwill employee(s) was acting  
3 under the color of state law. ECF No. 7 at 4. As explained to Ms. Brown in the Screening Order (ECF  
4 No. 5), to state a claim under § 1983, a plaintiff must allege the violation of a right secured by the  
5 Constitution and laws of the United States and must show that the alleged deprivation was committed by  
6 a person acting under the color of state law. *See West v. Atkins*, 487 U.S. 42, 48, 108 S. Ct. 2250, 101 L.  
7 Ed. 2d 40 (1988). The Court further stated what it means for a person to “act under the color of state  
8 law.” *See* ECF No. 5. Ms. Brown’s amended complaint, however, does not allege any new facts that  
9 show that any of the defendants acted under color of state law, or an act of “governmental compulsion or  
10 coercion.” *See Rawson v. Recovery Innovations*, 975 F.3d 742, 748 (9th Cir. 2020). In other words, Ms.  
11 Brown does not show that the state acted through Goodwill and/or its employees to violate her  
12 Constitutional rights. Therefore, the Court finds that Ms. Brown has failed to cure this deficiency. The  
13 Court acknowledges the difficulties a pro se plaintiff may face and provides her with one last chance to  
14 amend her complaint.

15                   **ii. Heck Doctrine**

16           Although Ms. Brown does allege more specific facts, and names previously unnamed  
17 defendants, she does not allege any new facts that show that her case is not barred by the *Heck* Doctrine.  
18 *See Heck v Humphrey*, 512 U.S. 477, 483-87 (1994) (holding that if a § 1983 case seeking damages  
19 alleges constitutional violations that would necessarily imply the invalidity of a conviction or sentence,  
20 the prisoner must establish that the underlying sentence or conviction has been invalidated on appeal, by  
21 habeas petition, or through similar proceeding). Ms. Brown has not shown that her arrest stemming from  
22 the Goodwill incident has been invalidated upon appeal. Thus, the Court finds that Ms. Brown has failed  
23 to cure this deficiency. However, the Court acknowledges the difficulties a pro se plaintiff may face and  
24 provides her with one last chance to amend her complaint.

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1                   **iii. Miscellaneous**

2           Ms. Brown alleges facts that seem reminiscent of state law claims. Courts in this circuit have  
3 explained that where state law claims arise from the same nucleus of operative fact as federal claims, a  
4 district court may properly invoke its supplemental jurisdiction over the state law claims. *See*  
5 *Bahrampour v. Lampert*, 356 F.3d 969, 978 (9th Cir.2004). To the extent Ms. Brown may be trying to  
6 allege state law claims against the defendants, the Court declines to address those at this time. *See*  
7 *Carnegie-Mellon Univ. v. Cohill*, 484 U.S. 343, 350 n.7 (1988) (“[I]n the usual case in which all federal-  
8 law claims are eliminated before trial, the balance of factors to be considered under the pendent  
9 jurisdiction doctrine—judicial economy, convenience, fairness, and comity—will point toward declining  
10 to exercise jurisdiction over the remaining state-law claims.”) Therefore, until Ms. Brown successfully  
11 alleges a valid § 1983 claim, the Court will not address any potential state law claims.

12                   **iv. Amending**

13           In sum, to allege color of law, Ms. Brown must allege facts that show whether and how the  
14 Goodwill employee(s) was acting under the state’s orders in a way that led to her arrest and/or violation  
15 of her constitutional rights. She has failed to do so. To show that her claim is not barred by *Heck*, Ms.  
16 Brown must show that her conviction was invalidated through appeal, either through habeas proceedings  
17 or otherwise. Ms. Brown has failed to do so. The Court will give Ms. Brown a final chance to file an  
18 amended complaint. Ms. Brown is cautioned that an amended complaint must be complete in itself and  
19 cannot make reference to previous pleadings. See LR 15-1(a). An amended complaint supersedes the  
20 original complaint, meaning that once Ms. Brown files an amended complaint, the Court does not look  
21 back at her previous complaint. *See Rhodes v. Robinson*, 621 F.3d at 1005. Ms. Brown is also reminded  
22 that her amended complaint must comply with Rule 8 of the Federal Rules of Civil Procedure. See Fed.  
23 R. Civ. P. 8(a)(1)-(3).

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### 1           **III.     Motion For Appointment Of Counsel**

2           Ms. Brown filed a *Motion for Appointment of Counsel* (ECF No. 10). She requests counsel  
3 because she is being misunderstood. ECF No. 10 at 1. Ms. Brown also seems to request for an extension  
4 of time “until proper correspondence is made.” *Id.* The Court denies Ms. Brown’s *Motion for*  
5 *Appointment of Counsel* (ECF No. 10) without prejudice.

#### 6                   **a.   Legal Standard**

7           While a pro se inmate would likely benefit from the appointment of counsel, that is not the  
8 standard the courts must employ in determining whether counsel should be appointed. *See Wood v.*  
9 *Houseright*, 900 F.2d 1332, 1135-1336 (9th Cir. 1990). A litigant does not have a constitutional right to  
10 appointed counsel in 42 U.S.C. § 1983 civil rights claims. *Storseth v. Spellman*, 654 F.2d 1349, 1353  
11 (9th Cir. 1981). While federal courts are empowered to request an attorney to represent an indigent civil  
12 litigant under 28 U.S.C. § 1915(e)(1), the court can only grant such requests under extraordinary  
13 circumstances. *United States v. 30.64 Acres of Land*, 795 F.2d 796, 799-800 (9th Cir. 1986); *Wilborn v.*  
14 *Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986). A finding of such exceptional circumstances requires  
15 that the court evaluate both the likelihood of Plaintiff’s success on the merits and the *pro se* litigant’s  
16 ability to articulate his claims in light of the complexity of the legal issues involved. A court may find  
17 that “exceptional circumstances” exist if a claim is either factually or legally complex. *See, e.g.,*  
18 *McElyea v. Babbitt*, 833 F.2d 196, 200 n.3 (9th Cir. 1987) (per curiam) (suggesting that a plaintiff’s  
19 claim concerning the provision of religious books in prison raises “complicated constitutional issues”).  
20 Neither factor is controlling; both must be viewed together in making the finding. *Terrell v. Brewer*, 935  
21 F.2d 1015, 1017 (9th Cir. 1991), citing *Wilborn, supra*, 789 F.2d at 1331.

#### 22                   **b.   Analysis**

23           Ms. Brown has not demonstrated a likelihood of success on the merits. The Ninth Circuit has  
24 indicated that the articulation of a cognizable claim for relief may itself be sufficient to satisfy the  
25 “merit” analysis on a motion for appointment of counsel. *Turner v. Riaz*, 2018 U.S. Dist. LEXIS

1 194391, at \*11 (E.D. Cal. Nov. 13, 2018) (citing *Tilei v. McGuinness*, 642 Fed. Appx. 719, 722 (9th Cir.  
2 2016) (finding that plaintiff's "complaint states a claim for relief, and therefore suggests that he may  
3 succeed on the merits"). Ms. Brown's claims have not yet survived a screening order; thus, this factor  
4 weighs against the appointment of counsel. Since she has not yet demonstrated a likelihood of success  
5 on the merits, the Court denies her *Motion for Appointment of Counsel* (ECF No. 10) without prejudice.

6 **c. Extension of Time**

7 Within her *Motion for Appointment of Counsel* (ECF No. 10), Ms. Brown requests for an  
8 extension of time "until proper correspondence is made." ECF No. 10 at 1. Although Ms. Brown  
9 requests an extension of time, she does not specify what item she is requesting an extension on. Any  
10 such deadlines that may be at issue are not applicable to the motion, either because it was not raised or  
11 because she has already filed the document. For example, the only deadline that may have been at issue  
12 was the deadline to file the amended complaint. However, Ms. Brown had already filed an Amended  
13 Complaint (ECF No. 7) prior to requesting an extension. Therefore, the Court denies her request for  
14 extension.

15 Ms. Brown is reminded that she must comply with both the Federal Rules of Civil Procedure and  
16 the Local Rules. Local Rule IC 2-2 provides in relevant part: "For each type of relief requested or  
17 purpose of the document, a separate document must be filed, and a separate event must be selected for  
18 that document." This means that in the future, Ms. Brown should file a *Motion for Appointment of*  
19 *Counsel* separate from a *Motion for Extension of Time*.

20  
21 ACCORDINGLY,

22 **IT IS ORDERED that:**

- 23 1. Plaintiff's IFP application (ECF No. 9) is DENIED AS MOOT.  
24 2. The First Amended Complaint (ECF No. 7) is DISMISSED WITHOUT PREJUDICE and  
25 with leave to refile.

3. If Plaintiff chooses to file a curing the deficiencies of the First Amended Complaint as outlined in this order, she must file the amended complaint by **Wednesday, June 5, 2024**.
4. The Clerk of the Court will send to Plaintiff the approved form for filing a § 1983 complaint, instructions for the same, and a copy of her Amended Complaint (ECF No. 7).
5. If Plaintiff chooses to file an amended complaint, she must use the approved form and write the words "Second Amended" above the words "Civil Rights Complaint" in the caption.
6. If Plaintiff files a Second Amended Complaint, the Clerk of Court is directed NOT to issue summons on the amended complaint. The Court will issue a screening order on the amended complaint and address the issuance of summons at that time, if applicable.
7. The *Motion for Appointment of Counsel* (ECF No. 10) is DENIED WITHOUT PREJUDICE.

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### **NOTICE**

Pursuant to Local Rules IB 3-1 and IB 3-2, a party may object to orders and reports and recommendations issued by the magistrate judge. Objections must be in writing and filed with the Clerk of the Court within fourteen days. LR IB 3-1, 3-2. The Supreme Court has held that the courts of appeal may determine that an appeal has been waived due to the failure to file objections within the specified time. *Thomas v. Arn*, 474 U.S. 140, 142 (1985).

This circuit has also held that (1) failure to file objections within the specified time and (2) failure to properly address and brief the objectionable issues waives the right to appeal the District Court's order and/or appeal factual issues from the order of the District Court. *Martinez v. Ylst*, 951 F.2d 1153, 1157 (9th Cir. 1991); *Britt v. Simi Valley United Sch. Dist.*, 708 F.2d 452, 454 (9th Cir. 1983). Pursuant to LR IA 3-1, the plaintiff must immediately file a written notification with the court of any change of address. The notification must include proof of service upon each opposing party's attorney,



1 or upon the opposing party if the party is unrepresented by counsel. Failure to comply with this rule may  
2 result in dismissal of the action.

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4 DATED this 6<sup>th</sup> day of May 2024.

5 IT IS SO ORDERED.

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8 Hon. Maximiliano D. Couvillier III  
United States Magistrate Judge  
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